

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

ROBERT LIONEL SANFORD,

Plaintiff,

vs.

DR. LEVIN, et al.,

Defendant.

CASE NO. 08-CV-1049 H PCL

**ORDER DECLINING TO
VACATE SUMMARY
JUDGMENT**

On June 11, 2008, Plaintiff Robert Lionel Sanford, a state prisoner proceeding *pro se*, filed a complaint alleging violations of his Eighth Amendment rights while incarcerated at Calipatria State Prison arising out of treatment for nose and sinus problems. (Doc. No. 1.) On May 14, 2010, Defendants Levin, Sawtell, and Thomas filed a motion for summary judgment. (Doc. No. 95.) On May 17, 2010, the Court issued an order pursuant to Rand v. Rowland, 154 F.3d 952 (9th Cir. 1998) (en banc) and Klinge v. Eikenberry, 849 F.2d 409 (9th Cir. 1988) warning Plaintiff that Defendant's motion for summary judgment seeks to have the case dismissed. (Doc. No. 96.) Plaintiff filed a response in opposition to Defendants' motion on June 2, 2010. (Doc. No. 105.) On June 14, 2010, Defendants filed a reply in support of their motion. (Doc. No. 106.) On June 28, 2010, Plaintiff filed a sur-reply. (Doc. No. 112.) On June 30, 2010, the Court granted Defendants' motion for summary judgment. (Doc. No. 109.) On June 30, 2010, the Clerk entered judgment against Plaintiff and in favor of Defendants Levin, Sowtell and Thomas. (Doc. No. 110.)

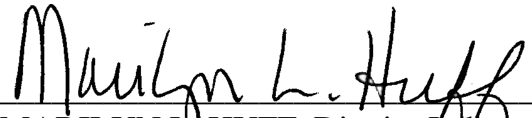
1 On July 16, 2010, Plaintiff filed a notice of appeal in this case. (Doc. No. 113.) On
 2 July 16, 2010, Plaintiff also filed a motion titled "request for certificate of appealability,"
 3 supported by his declaration. (Doc. No. 114.) Plaintiff's declaration argues that the Court's
 4 June 30, 2010 Order granting Defendants' motion for summary judgment was incorrect and
 5 should be reversed. (Doc. No. 114-1 at 1, 3.) The Court disagrees.

6 Even if the Court construes Plaintiff's motion as a motion for reconsideration under the
 7 Federal Rule of Civil Procedure 60(b), it fails. A motion for reconsideration of summary
 8 judgment can be brought under Rule 60(b). Taylor v. Knapp, 871 F.2d 803, 805 (9th Cir.
 9 1989). For a motion for relief of a judgment, Rule 60(b) provides for reconsideration where
 10 one or more of the following is shown: (1) mistake, inadvertence, surprise or excusable
 11 neglect; (2) newly discovered evidence which by due diligence could not have been discovered
 12 before the court's decision; (3) fraud by the adverse party; (4) the judgment is void; (5) the
 13 judgment has been satisfied; (6) any other reason justifying relief. Fed. R. Civ. P. 60(b);
 14 School Dist. 1J v. ACandS Inc., 5 F.3d 1255, 1263 (9th Cir.1993). Rule 60(b) "provides a
 15 mechanism for parties to seek relief from a judgment when 'it is no longer equitable that the
 16 judgment should have prospective application,' or when there is any other reason justifying
 17 relief from judgment. Jeff D. v. Kempthorne, 365 F.3d 844, 853-54 (9th Cir.2004) (quoting
 18 Fed. R. Civ. P. 60(b)).

19 Plaintiff has not shown grounds for reconsideration of the Order granting summary
 20 judgment. Accordingly, the Court declines to vacate its order. Moreover, the Court need not
 21 file a certificate of appealability in a section 1983 case, and denies the request on that ground.

22 **IT IS SO ORDERED.**

23 DATED: July 27, 2010

24 
 25 MARILYN L. HUFF, District Judge
 26 UNITED STATES DISTRICT COURT
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